

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Status of Children's Television Programming)	MB Docket No. 00-167
)	
)	

COMMENTS OF CHILDREN'S MEDIA POLICY COALITION

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SUMMARY

The Children's Media Policy Coalition submits these comments in response to the Commission's request for information on the status of children's educational and informational programming currently provided by broadcasters pursuant to their obligations under the Children's Television Act ("CTA") of 1990 and Commission programming guidelines. The Coalition assessed the amount of, and preemption rates for, the Educational/Informational (E/I) programs for affiliates in six of the top ten Designated Market Areas (DMA). Our survey revealed that broadcasters are generally providing three-hours of programming. Nonetheless, areas of concern remain:

- Nearly all E/I programming is relegated to weekends, with little provision on weekdays, even though weekdays comprise a significant portion of children's television viewing time. Furthermore, weekend E/I programming is more likely to be preempted due to sports events.
- Preemption continues to be a problem. Half of the stations surveyed by the Coalition preempted E/I programs at least once in Q1 2007. One quarter of the stations preempted E/I programs between 6 and 17 times.
- Parents and children continue to have difficulty finding information and schedules for E/I programming. Furthermore, the E/I identifier varies greatly from network to network and is difficult to see on some shows.

The Coalition also viewed and analyzed the E/I programs offered by broadcasters in the Los Angeles DMA. This programming is representative of programming offered in most markets across the country. The Coalition found that children remain underserved in the following areas:

- The vast majority of broadcasters air programs with social/emotional lessons, but offer comparatively few academic or informational shows. The Commission and Congress have

recognized that children can benefit substantially from viewing E/I programs that provide academic and informational lessons, yet it does not appear that children are receiving these benefits.

- Some programs reported as E/I contain little or no educational content. Instead, some programs provide weak or generic social lessons; still others appear to be merely entertainment programs masquerading as educational.

To ensure that children have access to more and diverse educational programs, the Coalition recommends the following:

- The Commission should require broadcasters to schedule at least some E/I programming on weekdays between the hours of 7 am and 10 pm.
- To help parents find E/I programming, the FCC should only count programming toward the processing guideline that has been clearly and prominently identified as E/I and described on the station's website. The FCC should also develop a standard E/I logo to ensure that broadcasters uniformly and clearly display the E/I symbol on children's educational television shows.
- The FCC should require broadcasters to air educational programming designed to meet the cognitive/intellectual, in addition to the social/emotional, needs of children.
- The Commission should promptly address public complaints regarding broadcasters' non-compliance with the CTA. The FCC has not acted on a number of outstanding petitions to deny broadcast license renewals. Prompt action on these petitions would serve the needs of children and provide much needed guidance to licensees.
- The Commission should clarify that broadcasters with common ownership interests in the same DMA cannot count identical shows towards their E/I program hours. Such a

clarification would eliminate duplicate programming and ensure access to a greater diversity of core programming.

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Children Now, American Academy of Pediatrics, Benton Foundation, National PTA, and Office of Communication of the United Church of Christ, Inc. ("Children's Media Policy Coalition" or "Coalition"), by their attorneys the Institute for Public Representation, respectfully submit these comments in response to the Federal Communication Commission's ("FCC" or "Commission") Public Notice requesting comment on the status of children's educational and informational programming currently being provided.¹

I. INTRODUCTION

The Children's Television Act ("CTA") was passed in 1990 to remedy the failure of television stations to provide an adequate amount of educational programming specifically designed for children.² The CTA mandates that the Commission, in reviewing television stations' license renewals, consider the extent to which the licensee has "served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."³ When the Commission first adopted

¹ *Commission Seeks Comment on the Status of Children's Television Programming*, 72 Fed. Reg. 24308 (May 2, 2007) ("Public Notice"). Children's educational/informational programming is referred to as "E/I" or "core" programming throughout this comment.

² S. REP. No. 227, 101st Cong., 1st Sess. 1, 8-10 (1989) ("Senate Report").

³ 47 U.S.C. §303b(a)(2).

regulations to implement the CTA in 1991, it declined to adopt specific program requirements at that time.⁴ Subsequently, however, the Commission found that “some broadcasters [were] carrying very little regularly scheduled standard-length programming specifically designed to educate and inform children.”⁵ Thus, in 1996, the Commission strengthened its children’s television rules and adopted a processing guideline designed to increase the quantity and diversity of educational programming available to children.⁶

In September 2004, the Commission adapted the processing guideline for digital television, concluding that digital broadcasters that chose to multicast would have to increase the amount of children’s educational programming in proportion to the amount of additional free video programming they chose to provide.⁷ In the same order, the Commission promised to issue a Public Notice in the near future seeking comment on whether broadcasters were complying with the letter and intent of the CTA.⁸

In May 2007, the Commission published in the Federal Register a Public Notice seeking comment on the current state of children’s programming. In particular the Public Notice asks: 1) whether licensees are complying with the CTA; 2) whether programming reported as core generally meets Commission standards; 3) whether the present rules adequately define

⁴ *Policies and Rules Concerning Children’s Television Programming*, 6 FCC Rcd 2111 (1991).

⁵ *Policies and Rules Concerning Children’s Television Programming*, 11 FCC Rcd 10660, 10661 (1996) (“1996 Order”).

⁶ *Id.* at 10661-63. Under the processing guideline, stations that air a minimum of three hours, per week, of core educational children’s programming may have their license renewed by the FCC staff. Stations airing less than three hours of core programming will have their renewal application referred to the full Commission. *Id.* at 10723-24.

⁷ *Children’s Television Obligation of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rule Making, 19 FCC Rcd 22943 (2004) (“2004 Order”). The revised guideline took effect in January 2007. *Children’s Television Obligations of Digital Television Broadcasters*, Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065 (2006) (“2006 Order”).

⁸ *2004 Order*, 19 FCC Rcd at 22966.

educational and informational programming under the CTA or if additional criteria are needed, 4) whether the current level of preemption affects compliance with the CTA and Congressional intent; and 5) whether there are other ways in which broadcasters are complying or not complying with the CTA and Commission requirements.⁹

To answer these important questions, the Coalition reviewed the available academic studies. We found that few such studies exist and that most are already out of date.¹⁰ Thus, Coalition member Children Now sought funding necessary to commission a new study. Dr. Dale Kunkel has agreed to analyze educational children's programming in a number of markets across the country starting in the fall 2007 quarter. However, since this study will not be completed until well after the due date for these comments, the Coalition conducted two surveys in an attempt to answer the questions posed in the Public Notice.

Appendix I reports on our review of Children's Television Programming Reports (398 Forms) filed by network affiliates in six top-ten television markets for the first quarter 2007. This survey examines the amount of core programming aired and the extent to which such programs are preempted.¹¹ To address whether programming reported as core generally meets Commission standards, Children Now reviewed the episodes of most of the programs claimed as core by major broadcast networks in the Los Angeles market. The results of this review are reported in Appendix II. While this review is not intended to be an exhaustive examination of

⁹ *Public Notice* at ¶ 6.

¹⁰ The Annenberg Public Policy Center conducted three studies assessing the state of educational children's programming. See Amy Jordan, *The 1997 State of Children's Television report: Programming for Children Over Broadcast and Cable Television*, Annenberg Public Policy Center (1997) ("Annenberg 96-97 Study"), Kelly Schmidt, *The Three-Hour Rule: Is it Living Up To Expectations?*, Annenberg Public Policy Center (1999) ("Annenberg 98-99 Study"), Amy Jordan, *Is the Three-Hour Rule Living Up To Its Potential?*, Annenberg Public Policy Center (2000) ("Annenberg 99-00 Study") (collectively, "The Annenberg Studies").

¹¹ See Appendix I.

E/I compliance, it does give a general illustration of the extent to which broadcasters are meeting the letter and the spirit of the CTA and Commission rules. Moreover, the programs airing in the Los Angeles Designated Market Area (DMA) are largely representative of (and in most cases identical to) the programming provided by major networks in most markets across the country.

II. FINDINGS

A. Most Stations Are Providing an Average of Three Hours of E/I Programming Per Week

Of the thirty major network affiliates surveyed by the Coalition, the average amount of core programming broadcast per station, per week was 3.16 hours in the first quarter of 2007.¹² Thus, taking broadcasters' recent children's television programming reports at face value, licensees are generally meeting the three hour processing guideline. This finding is consistent with the earlier Annenberg studies which found that broadcasters were generally providing three-hours of programming.¹³

To the extent that one of the major purposes of the CTA was to increase the amount of educational programming offered to children, we believe that that goal is generally being met. In adopting the three-hour processing guideline, the FCC cited the National Association of Broadcaster's claim that commercial broadcasters were on average broadcasting two hours per week of regularly scheduled, standard length educational programming at the time the CTA passed.¹⁴ Because stations now are airing an average of three hours per week, the processing guideline has had an overall positive effect on the availability of children's educational programming. The processing guideline seems to be having the intended effect of providing "the appropriate counterweight to the market forces identified by Congress that tend to discourage

¹² See Appendix I at 1.

¹³ *Annenberg 96-97 Study* at 18; *Annenberg 98-99 Study* at 8-10; *Annenberg 99-00 Study* at 11.

¹⁴ *1996 Order*, 11 FCC Rcd at 10719.

broadcasters from airing children’s educational and informational programming.”¹⁵ At the same time, however, we are concerned that very few stations are airing more than the minimum necessary to meet the processing guideline. Despite the Commission’s encouragement to air more than three hours per week,¹⁶ few licensees are choosing to do so.

B. The Vast Majority of E/I Programming Is Broadcast on Weekends

Our survey found that virtually all major networks schedule children’s core programming on the weekends, and offer little or no programming during the rest of the week. In fact, of the 30 network affiliates analyzed by the Coalition, only one television station (affiliated with the CW network) scheduled its programs on weekdays.¹⁷

Scheduling children’s core programming solely on the weekends does not meet children’s needs. In a 1974 Policy Statement, the FCC expressed concern that many stations confined all or most children’s programming to Saturdays and Sundays.¹⁸ The Commission found that it was not “a reasonable scheduling practice to relegate all of the programming for this important audience to one or two days.”¹⁹

The Senate Report on the CTA also expressed concern that “[m]ost children’s programming is relegated to a limited number of time slots: on weekdays, two hours in the morning (7 am—9 am), three in the afternoon (3 pm—6 pm) and on Saturday morning, five

¹⁵ *Id.* at 10722.

¹⁶ *Id.* at 10721.

¹⁷ See Appendix I at entry for KDAF, Dallas-Ft. Worth. Additionally, ION Media Network affiliates, which were not reviewed in this sample because they provide programming identical to that of NBC affiliates, generally air their E/I programs on Friday afternoons.

¹⁸ *Children’s Television Report and Policy Statement*, 50 FCC 2d 1, 7 (1974) (“1974 Policy Statement”).

¹⁹ *Id.*

hours (7 am--12 am).”²⁰ In 1995, the FCC noted that while most network affiliates aired the bulk of their children’s programming on the weekends, Fox affiliates and most independent stations aired children’s programs on weekdays.²¹

Appendix I shows that the times when children’s educational programming is broadcast is much more limited today than it was in 1990 or 1995. Almost no children’s educational programming is currently being broadcast on weekdays. The consignment of children’s educational shows to weekends does not square well with children’s viewing habits. According to a Kaiser Family Foundation Study, children between the ages of 8 to 10 watch an average of 3 hours and 17 minutes per day, and children 11 to 14 similarly watch an average of 3 hours and 16 minutes per day.²² It is particularly important for children to have educational programming available during after-school hours when parents are likely to be at work and unable to guide viewing. Finally, when stations air core programming on the same days at the same time, the amount of programming available to children is limited because they can only watch one show at a time. Thus, it appears that the Congressional intent that children’s educational programming be broadly available at times when children are watching television has not been achieved.

C. Preemption of E/I Programming Continues to Be a Problem

Not only does scheduling children’s core programming solely on weekends fail to meet children’s viewing needs, it increases the likelihood that a core program will be preempted. Of the 30 network affiliates reviewed by the Coalition, one half preempted core programming at

²⁰ *Senate Report* at 8.

²¹ *Policies and Rules Concerning Children’s Television Programming*, Notice of Proposed Rulemaking, 10 FCC Rcd 6308, 6334-35 (1995).

²² Kaiser Family Foundation, *Generation M: Media in the Lives of 8-18 Year-olds* (March 2005), available at <http://www.kff.org/entmedia/entmedia030905pkg.cfm>, and National Institute on Media and the Family, *Fact Sheet: Children and Television*, available at http://www.mediafamily.org/facts/facts_childandtv.shtml.

least once in Q1 2007, and nearly one quarter of the stations preempted scheduled core programs between six and seventeen times.²³ A similar pattern was observed in the Annenberg Studies, which noted that “the [weekend] time slots populated by children’s E/I shows are also popular for preemption,” often as a result of sports scheduling.²⁴ For this reason, the Coalition is pleased that the FCC has resumed its prior practice of reviewing network preemption practices before the start of the new season.²⁵ However, we are disappointed that these requests are not available for the public to view online. While the FCC is making the preemption requests accessible to the public via its reading room in Washington, D.C., this effectively prevents advocacy groups and members of the public who do not reside in the District of Columbia from reviewing the requests. Thus, in future, the FCC should make the preemption flexibility requests available online.

D. It Continues to Be Difficult for Parents to Find E/I Programming

In its 1996 Order, the Commission adopted rules to increase parents’ awareness of the availability and scheduling of E/I programs by requiring that E/I programs be identified as such on air, requiring licensees to identify their E/I programming to the publishers of program guides, and by imposing standardized reporting requirements. As the Commission explained, “[p]arents can increase the audience of an educational program by encouraging their children to watch the show, but can only do so if they know in advance when the show will air and that the show is

²³ See Appendix I at 1.

²⁴ *Annenberg 96-97 Study* at 4; *Annenberg 99-00 Study* at 16.

²⁵ *Children’s Television Obligations of Commercial Television Broadcasters August 1 Deadline for Filing Requests for Preemption Flexibility*, FCC Public Notice, DA 07-3386 (rel. July 27, 2007).

educational.”²⁶ In making the reporting requirements permanent in 2000, the Commission again stressed that:

Parents who have access to information about educational programming, such as titles of programs, the times they are regularly scheduled to air, and the age for which the programs are intended, can select such programming for their children to watch, thereby increasing the audience for such programs and the incentive of broadcasters to air, and producers to supply, more such programs.²⁷

Despite the Commission’s well-intended requirements, the Annenberg studies found that parents were generally unaware of the existence of E/I programs.²⁸ In 2004, the Commission strengthened the public information initiatives by requiring broadcasters to identify core programming with a continuous on-air E/I symbol.²⁹

Unfortunately, it is still the case that most parents remain unaware of the existence of E/I programming. A Kaiser Family Foundation survey released earlier this year found that only 5% of parents of 2 to 6-year-olds know what the E/I symbol means.³⁰ Additionally, even though the FCC requires broadcasters to identify programming with the E/I symbol, the Coalition found that the styles and colors used for the symbol vary greatly by network, and the E/I symbol was too transparent to read on some shows.³¹

Even if parents were more familiar with the “E/I” designation, it is not clear that they would be able to locate E/I programs or identify which programs would be age-appropriate for

²⁶ 1996 Order, 11 FCC Rcd at 10682-83.

²⁷ *Extension of the Filing Requirements for Children’s Television Programming Reports (FCC Form 398)*, 15 FCC Rcd 22921, 22923 (2000).

²⁸ *Annenberg 98-99 Study* at 25.

²⁹ 2004 Order, 19 FCC Rcd 22943, 22959 (citing the *Annenberg 98-99 Study* at 25).

³⁰ Kaiser Family Foundation, *Parents, Children, and the Media Survey* (June 2007) at 9, available at <http://www.kff.org/entmedia/entmedia061907pkg.cfm>.

³¹ See Appendix II at 22.

their children.³² While FCC rules require broadcasters to provide program guide publishers with core program information, including target ages, we are currently unaware of any program guides that regularly provide such information. The Coalition is also unaware of any cable system operators who provide E/I program information on their digital program guides.³³

While broadcasters may not be able to compel program guide publishers to print such information, broadcasters themselves can make this information readily available to the public via their websites. However, the Coalition's survey of the websites of 30 major broadcast affiliates in six of the top ten markets revealed that only one station identified children's programming as E/I.³⁴ No stations identified the target age for their programs. On the whole, the online programming schedules on many stations' websites were very difficult to locate, and all but one simply linked to independent online programming guide providers, such as TV Guide, instead of providing their own program information.³⁵

Even where networks are supposedly promoting their roster of educational programming, information on the existence of such programs does not appear to be reaching the general public -- or indeed, the local network affiliates themselves. For example, "qubo," NBC and ION Media Network's joint lineup of children's core programming, has a helpful website which explains the

³² Additionally, as noted above, the significant amount of core programming preemptions makes it more difficult for parents and kids to find and rely on regularly scheduled programming.

³³ A digital program guide, sometimes called an electronic program guide, is an on-screen guide to scheduled television programs, which allows a viewer to navigate, select, and discover content by time, title, channel, genre, etc, by use of their remote control. It is available on the vast majority of cable systems that offer digital cable subscriptions.

³⁴ WJLA, the Washington, D.C. ABC affiliate, indicated core programming with the E/I icon in its online schedule. However, the website did not provide any explanation of what E/I meant. *See* <http://dynamic.allbrittontv.com/programschedule.hrb?wjla&d=08/11/07>.

³⁵ Other online program guide providers include "Titan TV" (<http://www.titantv.com/>) and "Zap 2 It" (<http://www.zap2it.com/tv/>). These providers identify children's programming generally, but do not provide any information on core programming.

significance of the E/I designation and the importance of core programming.³⁶ Unfortunately, none of the NBC affiliates websites in the six markets surveyed provided any information on “qubo,” nor were there any links to the external “qubo” website.³⁷ Thus, even assuming that parents were aware of the existence of “qubo,” they would not be able to find any information about such programming on their local NBC affiliate website.

E. The Vast Majority of E/I Programming Is Intended to Impart Pro-Social Messages Instead of Skills, Academics or Factual Information

Congress enacted the CTA in part due to a concern that “far too many of our children cannot read, add and subtract, or understand the meaning of important events.”³⁸ It found that “television can assist children to learn important information, skills, values and behavior.”³⁹

The Senate Report cited examples of educational programs on public television designed to teach reading, science, and math, and suggested that commercial stations had an obligation to provide similar programming.⁴⁰ While the Senate Report acknowledged the value of some network programming teaching pro-social behaviors, it clearly wanted to see an increase in programming teaching basic skills and imparting information.

Children Now’s surveys of available E/I programs (see Appendix II) found that of the twenty-three episodes of programs offered by major broadcast networks in the Los Angeles

³⁶ Available at <http://qubo.com/parents.asp>

³⁷ The national NBC Network website does provide a link to the “qubo” website and provides a list of programs in the “qubo” roster; however it does not explain on its own website what “qubo” is, or that the programs are educational. See http://www.nbc.com/NBC_Saturday_Morning/. ION, which has no individual affiliate websites, provides a link to the “qubo” website on its national website, but does not otherwise explain what “qubo” is. See <http://www.ionline.tv/>.

³⁸ Senate Report at 5.

³⁹ Id. at 9; Children’s Television Act of 1990, Title I, §101.

⁴⁰ Senate Report at 6-7.

DMA,⁴¹ seventeen shows claimed solely social-emotional messages;⁴² two claimed only academic or informational lessons;⁴³ and four shows claimed both social-emotional and academic or instructional lessons.⁴⁴ None of the shows were designed to teach reading or math skills. Thus, in this regard, Congress' goal of having broadcasters provide programming that teaches academic skills is not being met.

One article suggests that children can benefit from legitimate pro-social programs because they are popular and well-understood by children, and consequently likely to make an

⁴¹ Children Now was unable to review two additional programs, *Beakman's World* and *Awesome Adventures*, both on the Fox Network, as a result of preemptions for sports programming. These shows were preempted ten and five times, respectively, in Q2 2007.

⁴² *The Emperor's New School*, *The Replacements*, *That's So Raven*, *Hannah Montana*, *The Suite Life of Zack and Cody*, *Sabrina: The Animated Series*, *Trollz*, *Horseland*, *The Littles*, *Strawberry Shortcake*, *Winx Club*, *Babar*, *Dragon*, *3-2-1 Penguins!*, *Veggies Tales*, *Jane and the Dragon*, and *Jacob Two-Two*.

⁴³ *Really Wild Animals* and *Wild America*. *Beakman's World* is widely regarded as a strong traditional educational show, but as noted above, the episode could not be reviewed due to multiple preemptions.

⁴⁴ *Cake*, *Dance Revolution*, *Liberty's Kids*, and *Madeline*. Of the six programs with some claimed academic or informational content, CW's *Liberty's Kids* was one of the strongest. It offered traditionally academic lessons about history and the founding of our country, and managed to include some pro-social messages as well. See Appendix II at 16-17. Similarly, the reviewed episode of the CBS show *Cake* provided instructions and safety tips for an arts-and-crafts project, while simultaneously integrating a relevant social lesson about respecting privacy. See *id.* at 14. National Geographic's *Really Wild Animals*, which aired on Fox, provided a cursory introduction to animal behavior. However, it appeared to have been designed for a very broad audience. The Form 398 indicates that the target age for *Really Wild Animals* is 2-11, while at the same time describing the programming as taking "children and young teens on a wondrous [sic] journey." See *id.* at 20 (emphasis added). The Senate Report found that "[c]hildren's educational programming is most effective when it is designed to focus on particular age groups and address specific skills." *Senate Report* at 6. FCC has similarly noted that educational programming must be targeted at segments of the child audience, and that "[a]n educational program for children aged 2-5, however, may well be of little interest to children 6-11." *1996 Order*, 11 FCC Rcd at 10674. The CW show *Wild America* also provided educational content focusing on nature and wildlife; however the episode reviewed was at least twenty years old and, moreover, appeared to be geared towards a general audience rather than children. See Appendix II at 15-16. CBS's *Dance Revolution* discussed the health benefits of dancing and exercise, but failed to deliver on any of the educational messages claimed in the 398 Form. See *id.* at 14-15. *Madeline* contained some scattered use of French language; however the episode reviewed primarily focused on a pro-social message. See *id.* at 9.

educational impact.⁴⁵ However, all too often “pro-social” appears to have become a vague catch-all classification that allows some broadcasters to label almost any children’s program as educational.

Children Now found that some programs claiming to provide pro-social lessons presented messages that were simply too generic or too weak to meaningfully comply with the spirit of the CTA and FCC rules. For example, an episode of NBC’s *Dragon* offered stories about friends who do favors for one another; however, no clear pro-social message was present, other than that friends like to help each other.⁴⁶ Likewise, an episode of ABC’s *Hannah Montana* provided a very weak message about persistence and hard work. In the reviewed episode, the title character creates a novel song-and-dance method to study for a test. Her teacher won’t let Hannah use the study device during the test, but still gives her an A+ because she’s impressed with the studying technique. Thus, what could have been a message about studying hard was lost because Hannah received a good grade for her studying technique, not because she learned anything.⁴⁷

Even if the pro-social category were not subject to such manipulation, we do not believe that the preponderance of pro-social programs is consistent with Congressional intent. The Senate Report emphasized the benefits of watching programming that provides primarily academic lessons.⁴⁸ Similarly, the Commission has recognized the benefits to society, and especially lower income families, when television is used to teach vocabulary, math, school-readiness and other skills.⁴⁹

⁴⁵ See Calvert, Sandra. *Lessons from Children’s Television: The Impact of the Children’s Television Act on Children’s Learning*, 24 *Applied Developmental Psychology* 275, 326 (2003).

⁴⁶ See Appendix II at 23-24.

⁴⁷ See *id.* at 7.

⁴⁸ *Senate Report* at 5; *1996 Order*, 11 FCC Rcd. at 10664.

⁴⁹ *Id.* at 10664-5.

F. Some Programming Reported as E/I Contains Little or No Educational or Informational Content

Congressional intent to increase the amount of educational and informational programming for children on broadcast television can only be fulfilled if the programming has significant educational or informational content. In adopting the processing guideline in 1996, the Commission found that some broadcasters were “claiming to have satisfied their statutory obligations with shows that, by any reasonable benchmark, cannot be said to be ‘specifically designed’ to educate and inform children within the meaning of the CTA.”⁵⁰ As examples of “frivolous claims,” the Commission cited a study by Dr. Dale Kunkel which found stations claiming “America’s Funniest Home Videos,” “Biker Mice from Mars,” “Bugs and Friends,” “Mighty Morphin Power Rangers,” “Woody Woodpecker,” “X-Men” and “Yogi Bear,” as educational and informational programming.⁵¹

To combat questionable educational claims by broadcasters, the Commission changed the definition of “educational and informational programming” from “any television programming that *furtheres the positive development* of children 16 years of age and under in any respect, including the child’s intellectual/cognitive or social/emotional needs” to “any television programming that *furtheres the educational and informational needs* of children 16 years of age and under in any respect, including children’s intellectual/cognitive or social/emotional needs.”⁵² In addition, it required that such programming have “educating and informing children as a significant purpose.”⁵³ The Commission explained that the “significant purpose” standard

⁵⁰ 1996 Order, 11 FCC Rcd 10660, 10661.

⁵¹ *Id.* at 10679 n. 100 (citing Dale Kunkel NOI Comments (October 16, 1995)).

⁵² *Id.* at 10698 (changed language indicated by italics).

⁵³ *Id.* at 10699. The CTA requires broadcasters to air programming that is specifically designed to serve the “educational and informational needs of children,” but does not distinguish between cognitive/academic and social/emotional programming. See 47 U.S.C. § 303b(a)(2); 1996 Order, 11 FCC Rcd. at 10701.

“appropriately acknowledges the point ... that to be successful, and thus to serve children’s needs as mandated by the CTA, educational and informational programming must also be entertaining and attractive to children.”⁵⁴ But the Commission emphasized that:

entertainment programming with a minor or wrap around educational or informational message cannot correctly be said to have serving the educational or information needs of children as a significant purpose. We anticipate that any attempt to incorrectly characterize programming as core will elicit significant opposition from the community, about which the FCC will be apprised.⁵⁵

Despite the adoption of Commission guidelines, some broadcasters continue to claim as E/I, programs having little or no educational value. In the three years following the adoption of the FCC’s guideline’s the Annenberg Public Policy Center conducted extensive reviews of the E/I program offerings of broadcasters. The studies looked at three episodes each of the shows offered by broadcasters in the Philadelphia market from 1997 to 2000, noting that the shows were generally representative of the programming available to children around the country.⁵⁶

In evaluating the educational quality of programming claimed as E/I by broadcasters the Annenberg researchers applied four criteria: 1) “*Lesson Clarity*: Is the lesson clearly and explicitly laid out so that it can easily be comprehended by children in the target audience?” 2) “*Lesson Integration*: Is the lesson a salient aspect of the program and integral to the program as a whole?” 3) “*Lesson Involvement*: Considering the target audience for the program, does the program contain children or child-like characters of the target audience’s age?; are the majority of production techniques understandable?” and 4) “*Lesson Applicability*: Is the target audience shown carefully conveyed, realistic situations and solutions that children can apply to their own

⁵⁴ *Id.* at 10700.

⁵⁵ *Id.* at 10701.

⁵⁶ *Annenberg 99-00 Study* at 6. The *Annenberg 98-99 Study* also sampled programming outside of the Philadelphia DMA. See *Annenberg 98-99 Study* at 18-24.

lives and situations?”⁵⁷ Over the course of the three studies, Annenberg reviewed hundreds of programs and found that in each of the three years studied, one fifth to one fourth of programs labeled E/I contained little educational content.⁵⁸

Children Now’s recent survey found that broadcasters are continuing to offer shows which do not meet the standards set by the Commission. In fact, some reviewed episodes of currently claimed E/I programs contained no educational message whatsoever. For example, although *Winx Club* was described by the licensee as promoting “the development of social skills, with actions such as speaking kindly to others, doing good for one’s [sic] community, and managing anger appropriately,”⁵⁹ Children Now found that the episode it reviewed contained the gender-biased message that girls’ priorities should be their appearance and attractiveness to boys.⁶⁰ Indeed, the *Winx Club* theme song itself, which precedes every episode, embodies the general theme of the show:

*We’ve got the style
We’ve got the flair
Look all you want
Don’t touch my hair*

Similarly, *Trollz* was described by the licensee as providing “an opportunity for the five girls to learn how to cope with some of the social and emotional issues of self-esteem relating to physical features and other personal attributes, emerging friendships and peer-group relationships, and other experiences found in Trollzopolis.”⁶¹ In fact, not only did the reviewed episode not contain any educational message, it instead promoted harmful sexist stereotypes.

⁵⁷ *Annenberg 96-97 Study* at 21-22; *Annenberg 98-99 Study* at 15; *Annenberg 99-00 Study* at 20-21.

⁵⁸ *Id.* at 27.

⁵⁹ *See Appendix II* at 20.

⁶⁰ *See id.* at 8, 14.

⁶¹ *See id.* at 11.

This is particularly disturbing given a recent American Psychological Association study which found that media messages emphasizing physical attractiveness and sexualized images of females have a negative influence on the development of young girls.⁶²

Some programs with arguably pro-social messages undermined these messages with anti-social and unhealthy messages. For example, one episode of *The Replacements* seems designed to teach children that violence is not the best way to solve problems.⁶³ However, the episode failed to offer an alternative to violence in the scenario presented, and the message was further undermined by the fact that a parental figure consistently (and successfully) used violence to accomplish daily tasks.⁶⁴ Similarly, an episode of *The Suite Life of Zack and Cody* attempted to convey the pro-social messages that one should appreciate family and that it's often better to be honest with one's feelings than to act tough.⁶⁵ However, characters lied, were disrespectful to adults (police officers in particular), and failed to wear seatbelts during the reviewed episode. The characters suffered no consequences for these actions, and the episode failed to discourage such behavior.⁶⁶ Thus, while there were pro-social messages present, these messages were undermined by reinforcement of anti-social behavior and the inclusion of unhealthy messages.

Coalition member UCC found similar problems in its review of E/I programs. UCC members in communities around the country taped and analyzed a selection of claimed E/I programs. While they found several programs had questionable educational value, some programs were so lacking in any educational content that UCC filed license renewal challenges. For example, in 2004, UCC filed a petition to deny the license renewal of WDCA, a Fox

⁶² American Psychological Association, *Report of the APA Task Force on the Sexualization of Girls* (2007), available at <http://www.apa.org/pi/wpo/sexualization.html>.

⁶³ See Appendix II at 4.

⁶⁴ See *id.*

⁶⁵ See *id.* at 8.

⁶⁶ See *id.*

affiliate, operating in the Washington, D.C. DMA.⁶⁷ In that petition, children's media expert Dr. Dale Kunkel found that WDCA's program *Ace Lightning* lacked education as a significant purpose and moreover conveyed an overwhelming antisocial message of violence. In particular, Dr. Kunkel found that the show *Ace Lightning* had:

no palpable message, lessons, or curriculum at even the most modest level of depth that would contribute to a child's positive development in any sense. Furthermore, the clear emphasis of the content of the program is anti-social, including extensive scenes of violence, derisive and insulting comments among characters, callous treatment of the ills and misfortunes commonly experienced by children such as fear and anxiety, and stereotypical portrayals of adult authority figures as being stupid and repugnant.⁶⁸

The FCC has yet to address this petition and *Ace Lightning* is currently being offered in syndication as part of the DIC Kids Network "FCC friendly" core programming block.⁶⁹

Similarly, in 2005, UCC filed a petition to deny the license renewal application of Raycom National Inc., for television station WUAB in Cleveland, Ohio. Nine Cleveland educators, parents, or grandparents as well as Dr. Robert Abelman, a children's television expert at Cleveland State University, submitted Declarations finding that *Sabrina the Animated Series* lacked a significant educational purposes. Unfortunately, not only has the FCC failed to act on this petition, but stations around the country are continuing to claim that it is E/I.

In sum, though the programs claimed as E/I have changed since the FCC implemented the processing guideline, the Annenberg Studies, the UCC's program monitoring, and Children Now's recent review of programs all suggest that broadcasters continue to air programming that does not meet the spirit, and in some cases, the letter of the CTA and Commission rules.

⁶⁷ *Petitions to Deny Application of Renewal of Broadcast Station Licenses of Paxson Washington License, Inc. WPXW, Manassas, VA*: File No. BRCT-20040527AGS; *Fox Television Stations, Inc. WDCA, Washington, D.C.*: File No. BRCT- 20040527AKL (filed Sept. 1, 2004)

⁶⁸ *Id.* at Exhibit 2.

⁶⁹ See DIC Kids Network <<Programs>> at http://www.dicentertainment.com/dic_kids_network/ and http://www.dicentertainment.com/dic_kids_network/programs.php.

III. RECOMMENDATIONS

A. The Commission Should Modify the Processing Guideline

In light of the above findings, the Coalition proposes that the Commission modify the processing guideline as follows:

- To ensure that children have some E/I programming available throughout the week, the Commission should modify the processing guideline to require broadcasters to schedule at least some E/I programming on weekdays between 7 am and 10 pm.
- To help parents find E/I programming, the FCC should only count programming toward the processing guideline that has been clearly and prominently identified as E/I and described on the station's website. Furthermore, in addition to the current rule that programming be identified as "E/I," the Commission should adopt a standardized E/I icon to provide parents with a consistently recognizable symbol. The Commission should also require it to be clearly displayed, so that it is easily visible on all shows.
- To ensure that the children obtain the educational benefits intended by Congress, the FCC should modify the processing guideline to require broadcasters to air some educational programming specifically designed to meet the cognitive/intellectual instead of or in addition to the social/emotional needs of children.

**B. The Commission Should Act Promptly When It
Receives Complaints from the Public Regarding
Inadequate CTA Compliance**

The Public Notice asks whether the present rules adequately define educational programming or whether additional criteria are needed.⁷⁰ Children would undoubtedly benefit from a stronger definition of core programming. However, whatever definition is used, the Commission should act promptly to enforce the rules when it receives a complaint from the public.

The Commission designed its children's television rules to foster public participation in monitoring station performance and assisting the Commission in enforcing the statute.⁷¹ In determining whether programs listed as core actually have educating and informing children as a significant purpose, the Commission stated that it would "rely primarily on such public participation to ensure compliance with the significant purpose prong of the definition of core programming,"⁷² anticipating that "any attempt to incorrectly characterize programming as core will elicit significant opposition from the community, about which the FCC will be apprised."⁷³

Coalition member UCC has undertaken monitoring efforts and "apprised" the Commission by filing petitions to deny against licensees improperly claiming programming as educational. In September 2004, UCC filed a petition to deny the license renewals for WPXW, a Paxson (now ION) licensee, and WDCA, a Fox affiliate, operating in the Washington, D.C. DMA.⁷⁴ The petition to deny included a Declaration from Dr. Dale Kunkel demonstrating that WPXW's show *Miracle Pets* failed to meet the criteria for core programming because it was not

⁷⁰ *Public Notice* at ¶ 6.

⁷¹ *1996 Order*, 11 FCC Rcd at 10682.

⁷² *Id.* at 10701

⁷³ *Id.*

⁷⁴ *Petitions to Deny Application of Renewal of Broadcast Station Licenses of Paxson Washington License, Inc. WPXW, Manassas, VA*: File No. BRCT-20040527AGS; *Fox Television Stations, Inc. WDCA, Washington, D.C.*: File No. BRCT- 20040527AKL (filed Sept. 1, 2004).

specifically designed for children and did not have education as a substantial purpose. Dr. Kunkel also found that WDCA's programs *Ace Lightning* and *Stargate Infinity* lacked education as a significant purpose. In particular, Dr. Kunkel described *Stargate Infinity* as "among the most violent children's shows I have seen in my 20 years of studying children's television."⁷⁵ Neither of these petitions has been addressed by the FCC.

In August 2005, UCC challenged the license renewals of two Cleveland, Ohio television licensees: WUAB, a Raycom licensee, and WQHS, an Univision licensee.⁷⁶ In challenging the license renewal of WUAB, Cleveland parents and educators argued that *Sabrina the Animated Series* is an entertainment program, lacking a significant educational purpose. The Commission has not yet acted on this petition. The Univision petition, which argued that the soap opera, *Complices al Rescate*, was neither designed specifically for children nor did it have educating children as a significant purpose, was resolved through a consent decree, resulting in an unprecedented \$24 million dollar fine.⁷⁷ While the Coalition believes the fine was appropriate, it should not have taken a year and half for the FCC address the issues put forth in the petition. Moreover, because the Consent Decree did not explain the Commission's analysis as to what programming qualifies as E/I, it provides no direction to broadcasters.

The Commission should act promptly on these outstanding petitions to deny and should act promptly on any future petitions. Enforcement of the existing rules would help clarify any ambiguities and encourage broadcasters to take their responsibility to serve children more

⁷⁵ *Id.* at Exhibit 2.

⁷⁶ *Petition to Deny Application of Renewal of Broadcast Station License of Raycom National, Inc. WUAB, Lorain, OH*: File No. BRCT-20050527BIO (filed Aug. 31, 2005); *Petition to Deny Application of Renewal of Broadcast Station License of Univision Cleveland LLC, Cleveland, Ohio*: File No. BRCT-20050601BER (filed Aug. 31, 2005).

⁷⁷ *See Shareholders of Univision Communications Inc. and Broadcasting Media Partners, Inc.*, 22 FCC Rcd 5842, 5858-60 (2007) ("Consent Decree").

seriously. It is unreasonable for the FCC to expect the public to take on the onus of monitoring station compliance with the CTA when the Commission itself will not enforce its own rules.

In addition, the process of filing petitions to deny is extremely burdensome for the public. The Coalition suggests that the FCC make it easier for the public to participate by putting a prominent link on its website that would allow members of the public to easily file a complaint electronically when they believe that a licensee has not complied with the CTA. The FCC currently maintains such a link for the public to file indecency and telemarketing complaints, and should provide a similar procedure for CTA violation complaints.

C. The FCC Should Clarify that Stations with Common Ownership Interests Cannot Claim Identical E/I Programming Under Commission Rules

In the 2002 Biennial Ownership Review Report and Order, the Commission stated that multiple-owned stations in a market that air identical programming may not all count the same programs towards their three-hour processing guideline. It explained:

[T]he diversity of children's educational and informational programming could be reduced if commonly owned stations in the same market air the same children's programming. A primary purpose of the Children's Television Act of 1990 was to increase the amount of educational and informational programming available to children. It would be inconsistent with this Congressional objective to permit commonly owned stations in a market to rely on the same programming to meet the obligations set forth in Section 73.671 of our rules. We therefore clarify that where two or more stations in a market are commonly owned and air the same children's educational and informational program, only one of the stations may count the program toward the three-hour processing guideline set forth in Section 73.671.⁷⁸

This policy, which addresses how the Commission applies the children's television processing guideline and is not part of the ownership rules, was neither challenged by any of the many

⁷⁸ 18 FCC Rcd 13620, 13690 (2002) (*footnotes omitted*).

parties seeking court review, nor was it stayed by the Third Circuit in *Prometheus Radio Project v. FCC*.⁷⁹

The Coalition believes it would be appropriate for the Commission to further clarify that stations with any common ownership interests, not merely attributable ones, are bound by this prohibition. As a practical matter, the fact that an ownership interest is not attributable under FCC rules makes no difference. The resulting loss of diversity in programming from the common ownership harms children in the community, regardless of whether the ownership interest at issue is 15% or 50%. For example, NBC's non-attributable ownership interest in ION Media Networks is currently the subject of shareholder complaint filed with the FCC, which alleges that NBC is exercising excessive influence over ION.⁸⁰ ION stations and NBC owned and operated affiliates in eleven markets are currently claiming an identical roster of core programming.⁸¹ Indeed, this example makes clear that common ownership interests need not reach the level of duopoly status to result in the homogenization of programming. Thus, to ensure that children have access to the widest diversity of educational programming possible, the Commission should reiterate and make clear that even stations with non-attributable ownership interests cannot claim duplicate programming and still benefit from the FCC's processing guideline.

⁷⁹ *Prometheus Radio Project v. FCC*, 373 F.3d 372, 435 (2004) which extended the court's earlier stay of "the effective date of FCC's new ownership rules." *Prometheus Radio Project v. FCC*, 2003 WL 22052896 (Sept. 3, 2003 (emphasis added)).

⁸⁰ See Kouwe, *Citadel's Closing in on ION*, N.Y. POST, July 24, 2007.

⁸¹ These markets include New York, Los Angeles, Chicago, Philadelphia, Dallas, San Francisco, Raleigh, Miami, Birmingham, Columbus, and Hartford. See also <http://www.qubo.com/tvschedule.asp>

Respectfully Submitted,

/s/

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